

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JAVIER AMBLER, SR, *individually, on behalf of all* §
wrongful death beneficiaries of Javier Ambler, II, on §
behalf of the Estate of Javier Ambler, II, and as next §
friends of J.R.A., a minor child, et al., §

Plaintiffs, §

v. §

1:20-CV-1068-DII

MICHAEL NISSEN and CITY OF AUSTIN, §

Defendants. §

ORDER

Before the Court is the report and recommendation from United States Magistrate Judge Susan Hightower concerning Defendants City of Austin’s and Michael Nissen’s (collectively, “Defendants”) Motions for Summary Judgment, (Dkts. 165, 167). (R. & R., Dkt. 206). Pursuant to 28 U.S.C. § 636(b) and Rule 1(d) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Judge Hightower issued her report and recommendation on July 31, 2023. (*Id.*). Both Defendants filed objections to the report and recommendation. (Objs., Dkts. 210, 212).

A party may serve and file specific, written objections to a magistrate judge’s findings and recommendations within fourteen days after being served with a copy of the report and recommendation and, in doing so, secure *de novo* review by the district court. 28 U.S.C. § 636(b)(1)(C). Because Defendants timely objected to the report and recommendation, the Court reviews the report and recommendation *de novo*. Having done so and for the reasons given in the report and recommendation, the Court overrules Defendants’ objections and adopts the report and recommendation as its own order.

Accordingly, the Court **ORDERS** that the Report and Recommendation of the United States Magistrate Judge, (Dkt. 206), is **ADOPTED**.

Defendant Michael Nissen's Motion for Summary Judgment, (Dkt. 167), is **GRANTED IN PART** and **DENIED IN PART**. Specifically, the motion is granted as to Plaintiffs' deliberate indifference to a serious medical need claim but denied in all other respects.

Defendant City of Austin's Motion for Summary Judgment, (Dkt. 165), is **GRANTED IN PART** and **DENIED IN PART**. Specifically, the motion is granted as to Plaintiffs' claims that the City is liable for Nissen's Fourth Amendment violation based on its policy of condoning excessive force and failing to train its officers but denied as to Plaintiffs' claims for failure to enforce its intervention policy and violation of the Americans with Disabilities Act.

SIGNED on September 21, 2023.

A handwritten signature in blue ink, appearing to read "Robert Pitman", written over a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE